



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
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January 7, 2010

## TECHNICAL STAFF REPORT

*Petition Accepted on November 19, 2009  
Planning Board Meeting of January 21, 2010  
Zoning Board Hearing to be scheduled*

**Case No./Petitioners: ZB 1087M – Camilla Carroll, Philip D. Carroll**

**Location:** Third Election District  
South side of MD 144 approximately 1,300 feet west of US 40  
Tax Map 23, Grid 10, Part of Parcel 71; Part of 3500 Manor Lane (the "Site")

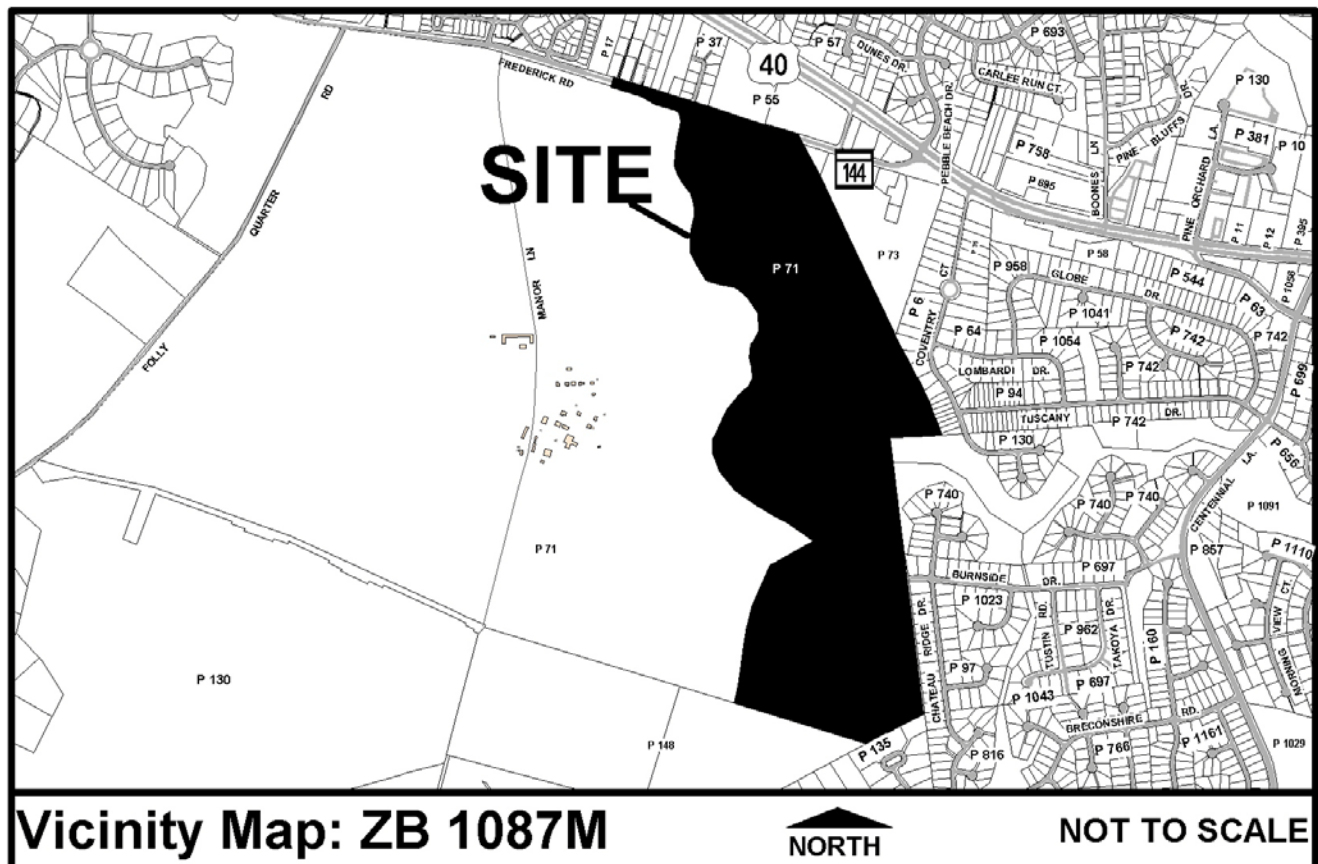
**Area of Site:** 221.1 acres

**Current Zoning:** RC-DEO

**Proposed Zoning:** R-ED

**Department of Planning and Zoning Recommendation:**

**APPROVAL**



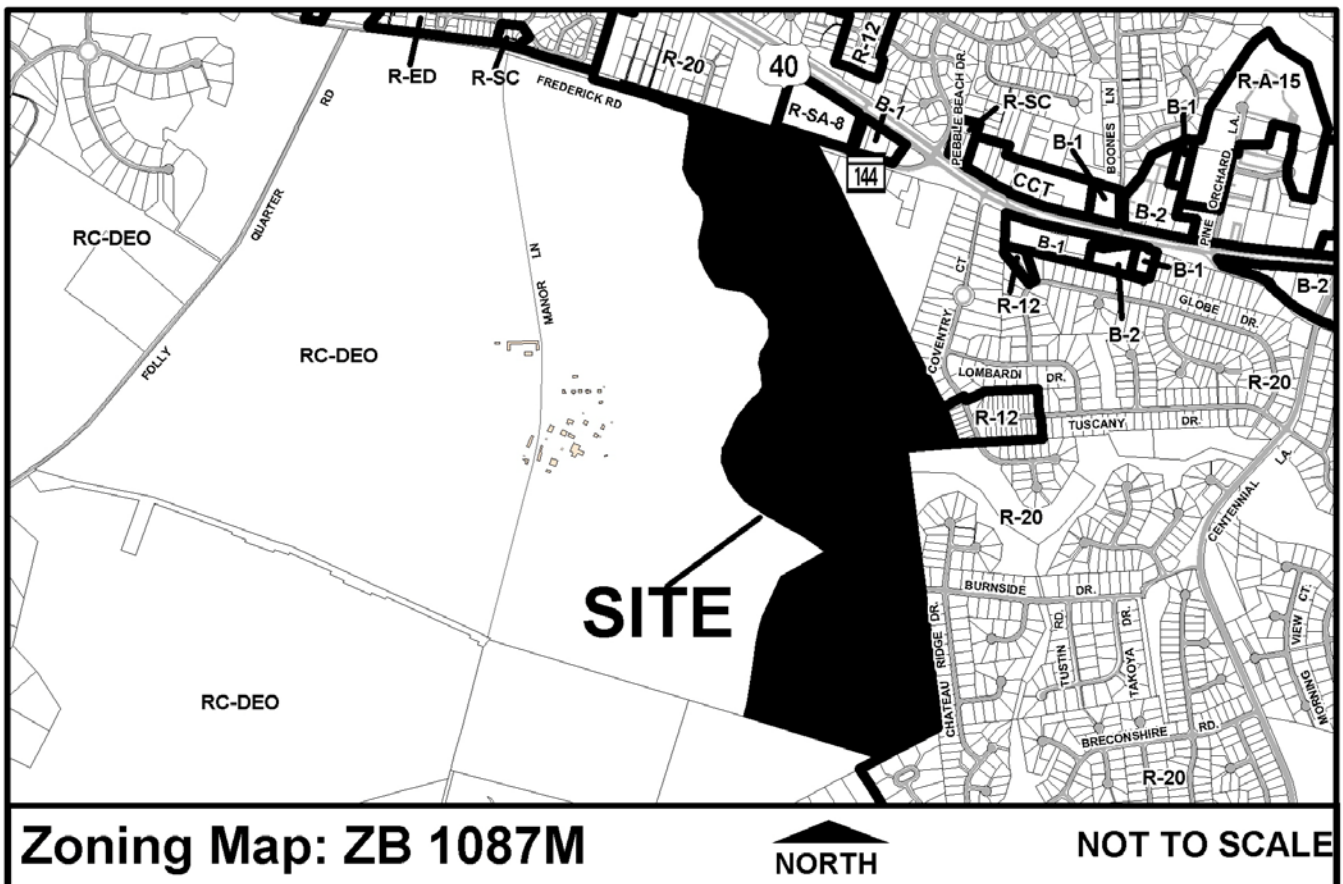
PETITIONERS: Camilla Carroll, Philip D. Carroll

**I. DESCRIPTION OF PROPOSAL**

- # **The Petitioners propose a Zoning Map Amendment to rezone the Site from the current RC-DEO (Rural Conservation-Density Exchange Option Overlay) District designation to the R-ED (Residential: Environmental Development) District.**

The Site is an irregularly-shaped, generally eastern portion of the much larger Parcel 71, which is approximately 892 acres and is commonly referred to overall as Doughoregan Manor which is a National Historic Landmark and is an important agricultural property (the "Property"). The greater Property extends along the south side of MD 144 (Frederick Road) from the Site approximately 3,600 feet to the west to Folly Quarter Road, and from MD 144 goes approximately one mile or more to the south, widening considerably on a west to east basis.

- # **Justification for this Zoning Map Amendment request is based upon an allegation of mistake in zoning ("Mistake"). The Petitioners do not include an allegation of substantial change in the character of the neighborhood since the 2004 Comprehensive Zoning Plan ("Change").**



**I. DESCRIPTION OF PROPOSAL**

In association with this Zoning Map Amendment request a General Plan Amendment, GPA 2010-1, is proposed to adjust the Planned Service Area boundary so as to include the area of the Site in the Planned Service Area so it can then qualify for public water and sewer service in the future.

This GPA 2010-1 proposal is directly tied to an endeavor to cluster the potential for residential development based upon the overall Property into the Site, so as to enable the preservation of the remainder of the Property to protect historic resources and agricultural resources. For the extensive details of the GPA 2010-1 proposal, please refer to the Technical Staff Report for that case.

- # **This Zoning Map Amendment request is completely integrated with GPA 2010-1 because the allegation of Mistake is fundamentally based upon an approval of this General Plan Amendment, which then causes the Site to become incorporated into the Planned Service Area. As stated in the petition in reference to the proposed GPA 2010-1:**

“With the approval of that amendment to the 2000 General Plan, a fundamental mistake becomes evident. The Zoning Authority [i.e., the Zoning Board, acting on the 2004 CZP] zoned the subject property RC-DEO with the assumption that it would remain in the no planned service area. That assumption has proven untrue with the passage of time.”

- # **This allegation of Mistake continues to state that “Had the Zoning Authority known at the time of the last Comprehensive Zoning Plan that the subject property would be incorporated into the PSA, they would not have zoned the property RC-DEO...”.**
- # **The Petitioners acknowledge that the Property “...could be used for single-family detached homes in accordance with the cluster subdivision regulations of RC-DEO – although the plan produced by this option is not desirable.”**

An explanation as to why such an option is not directly provided, but possibly can be inferred on the basis that the minimum and maximum lot sizes for a cluster subdivision, 40,000 to 50,000 square feet, are much larger than the minimum 6,000 square feet for the proposed R-ED District. A cluster subdivision of the Property under RC-DEO would take up a much larger area of the Property than the Site with a resulting smaller preserved area.

- # **In addition, without public water and sewer service, the locations for lots in a cluster subdivision under RC-DEO would be dependent upon the availability of septic system perk sites. This would likely create the need for more than one clustered-area on the Property, enlarge the developed areas and would have a much greater impact on the areas of the Property containing the historic structures, as well as greatly reduce future potential for farming on the Property.**

**I. DESCRIPTION OF PROPOSAL**

- # **In the petition, it is stated that the intention for an R-ED development on the Site is for a subdivision with 325 single-family detached dwellings and that "...the proposed 325 single-family detached dwellings...will be less than the maximum density permitted by right (in either RC-DEO or R-ED)."**

It is likely that the proposed 325 dwellings are less than the number of potential dwellings based upon the R-ED density of 2 dwelling units per net acre. The maximum base density under RC-DEO for the Property is approximately 210 cluster lots, however, there is the potential for adding additional density by using the Density Exchange Option provisions to increase the density to a point where it could exceed 325 dwelling units.

- # **It should be noted that although the Petition does include a Conceptual Lot Layout plan as part of the exhibits, this petition is not a Zoning Map Amendment with site plan documentation as provided in Section 100.G.2. of the Zoning Regulations.**

Therefore, if the Zoning Map Amendment were to be approved, an R-ED development of the Site could not be directly bound to this particular Conceptual Lot Layout plan. However, in association with the GPA 2010-1 proposal, and as also noted in the Technical Staff Report for that case, there is also proposed new legislation to amend the Howard County Code to allow for the County to enter into Development Rights and Responsibilities Agreements ("DRRA"). A DRRA would allow for guaranteeing certain aspects of a proposed development because these aspects are legally enforceable through the agreement.

- # **As explained in the petition and in the attached details of the Presubmission Community Meeting, the intention for such a DRRA in association with the development of the Site would include specifying that the development would only be for 325 single-family detached dwelling units, specifying matters related to a proposed 500 acre Agricultural Land Preservation Easement on the greater Property, dedicating approximately 34 acres to Howard County for land proposed to adjoin and enlarge the Kiwanis-Wallas Park, and setting a commitment so there could be no further Zoning Map Amendment requests for a certain period of time.**

It is presumed that this last issue concerning future Zoning Map Amendment requests refers to both the Site and the Property, but it is recommended that the Petitioners provide clarification on this.

- # **Another item that could be possibly be addressed in a DRRA for the development of the Site concerns an issue associated with Burnside Drive, an existing public road through the Chateau Ridge subdivision to the east, that terminates at a point adjoining the eastern boundary of the Site well to the south of the MD 144 frontage.**

## **I. DESCRIPTION OF PROPOSAL**

The Petitioners acknowledges that there is some measure of community opposition to extending Burnside Drive further to the west and noted that there was a Council resolution approved in the 1980s about this very issue.

The Petitioners state to be in agreement with not having a Burnside Drive connection to the Site, but also note that if a secondary access to the Site is considered necessary for public safety purposes, perhaps this can be accomplished through having it established as an emergency access only, and not as a full access public road.

## **II. ZONING HISTORY**

### **A. Subject Site**

- # **In the 1961 Comprehensive Zoning Plan, the Site was zoned R-90. The Site became zoned R (Rural) with the 1977 Comprehensive Zoning Plan, and this designation was retained in the 1985 Comprehensive Zoning Plan.**

The Site became zoned RC-DEO with ZB 928 (Comprehensive Zoning of Western Howard County) in 1992, and this was retained in the 1993 Comprehensive Zoning Plan and the 2004 CZP.

### **B. Adjacent Properties**

- # **The properties to the north of the Site, across MD 144, were zoned R-20 with the 1961 Comprehensive Zoning Plan. This zoning was changed to R (Rural) with the 1977 Comprehensive Zoning Plan, and this designation was retained in the 1985 Comprehensive Zoning Plan.**

The zoning of these properties was changed back to R-20 with the 1993 Comprehensive Zoning Plan. The R-20 was retained with the 2004 CZP with the exceptions that the current Ellicott Square site was rezoned to R-SA-8, and Parcels 39,10, and 96 adjoining the MD 144 intersection with US 40 were changed to B-1.

- # **There are numerous properties to the east of the Site, and these can be described in general as the Kiwanis-Wallas Park and its immediate adjoining neighboring properties (the “Kiwanis-Wallas Site”), the adjoining lots in the Pine Orchard Meadow neighborhood, the adjoining lots in the Centennial Manor neighborhood, and the adjoining lots in the Chateau Ridge neighborhood (altogether, the “Eastern Properties”).**

The Eastern Properties were all zoned R-20 with the 1961 Comprehensive Zoning Plan. Except the Kiwanis-Wallas Site which became zoned R (Rural), all the other Eastern Properties retained the R-20 zoning with the 1977 and 1985 Comprehensive Zoning Plans.

## **II. ZONING HISTORY**

The 1993 Comprehensive Plan changed the Kiwanis-Wallas Site to R-20, and kept the R-20 zoning for the other Eastern Properties except for an area around the Coventry Court intersection with Tuscany Road and the lots further to the east along Tuscany Road that became R-12. The 2004 CZP retained the zoning for the Eastern Properties.

## **III. BACKGROUND INFORMATION**

### **A. Site Description**

- # The Site is unimproved and irregularly shaped; although the eastern lot lines are straight, there are angles at two points, and the western lot lines are a series of curves and angles. From the MD 144 frontage, the Site extends more than 5,000 feet to the southeast.
- # The northern half of the Site consists of approximately six open field areas of varying sizes used for growing crops that are separated by wooded stream and wetlands areas of varying widths. The southern half of the Site, starting approximately to the west of the Centennial Manor subdivision, is almost entirely wooded.
- # The topography is rolling, with several hills and generally steeper areas adjacent to the streams. The overall topographic character of the Site is such that it drains towards the approximate middle of the eastern boundary.

### **B. Vicinal Properties**

- # From west to east, the properties to the north across MD 144 consist of the Cornell Property subdivision, which is zoned R-20 and has single-family detached dwellings fronting on Cornell Lane; Parcel 55, which is also zoned R-20 and is the site of the Ellicott City Assembly of God religious facility that was originally approved as a Special Exception in BA 92-45E; the Ellicott Square site which is zoned R-SA-8 with single-family attached dwellings fronting on Old Ellicott Circle; and Parcels 39, 10, and 96 which are zoned B-1 and are unimproved.
- # Adjoining the northeastern portion of the Site is the Kiwanis-Wallas Site which is all zoned R-20 and consists of Parcel 65, a triangular lot with a two-story frame single-family detached dwelling located relatively close to MD 144; Parcel 73, also generally triangular, which is the Kiwanis-Wallas Park consisting of multiple ball fields and associated parking lots and accessory buildings; and surrounded on three sides by Parcel 73 are Parcel 99, Parcel 85, and Parcel 15.

### III. BACKGROUND INFORMATION

Parcel 85 is the site of an animal hospital use. Parcel 99 consists of a single-family detached dwelling, a retail store, a large garage and other accessory structures. The retail building on Parcel 99 is a confirmed nonconforming use as approved in NCU 07-003, and the entire parcel is the subject of the pending ZB 1064M, which is a request to rezone the parcel to B-1.

- # **As noted above, the other Eastern Properties are residential lots in the Pine Orchard Meadow subdivision, the Centennial Manor subdivision, and the Chateau Ridge subdivision that have single-family detached dwellings fronting on Coventry Court Drive, Burnside Drive, and Chateau Ridge Drive. Most are zoned R-20, except for those lots at the intersection of Coventry Court Drive and Tuscan Drive that are zoned R-12.**
- # **Adjoining the southeastern portion of the Site is the Kingsbridge at Burleigh Manor subdivision, which is zoned R-20 and has single-family detached dwellings fronting on Princeton Circle. Adjoining to the south is property that is part of the overall Doughoregan Manor property, but beyond that is the Burleigh Manor subdivision, which is zoned RC-DEO and has single-family detached dwellings fronting on Kingsbridge Road and Whitebrook Lane.**
- # **To the west of the Site is the rest of the Doughoregan Manor farm. The closest farm buildings are slightly more than 1,200 feet from the Site at the closest point, and the historic manor house is estimated to be 3,200 feet or more from the Site.**
- C. **Roads**
- # **MD 144 along the Site frontage has two travel lanes, with combined acceleration and deceleration lanes for entrances on the north side of the road, and a variable paving width within a proposed 80 foot wide right-of-way. The posted speed limit is 40 miles per hour.**
- # **The State Highway Administration (“SHA”) comments recommend one access to MD 144 at the westernmost location on the Site. This would be at the northwest corner approximately across from Cornnell Lane. The estimated sight distance from this approximate location for a road entrance is over 900 feet to the west and over 1,000 feet to the east.**

Precise sight distance measurements may only be determined through a detailed sight distance analysis, however, and the actual location for the entrance will need to be determined and approved by the SHA.

- # **According to data from the State Highway Administration, the traffic volume on MD 144 west of US 40 was 8,571 ADT (average daily trips) as of 2007 and the traffic volume on MD 144 east of Folly Quarter Road was 8,771 ADT (average daily trips) as of May, 2006.**

### **III. BACKGROUND INFORMATION**

#### **D. Water and Sewer Service**

- # **The Property currently is not in the Metropolitan District and is within the No Planned Service Area according to the Geographic Information System Maps.**

However, there is a public sewer line that runs through the center of the Site that was installed to serve properties on the north side of MD 144, but was also sized to provide capacity in the event that a portion of the Property was ever allowed access to the public sewer system.

**The Petitioners have requested a General Plan Amendment to place the Site into the Planned Service Area for Water and Sewer. If this is approved, and subsequently the Master Plan for Public Water and Sewer is amended and the Site is placed in the Metropolitan District, a development on the Site would be served by public water and sewer facilities.**

In its comments submitted for the GPA 2010-1 proposal, the Department of Public Works explains that due to the existing limited excess nutrient capacity at the Little Patuxent Water Reclamation Plant, an on-site pretreatment system may be necessary for the Site. In addition, a planned parallel sewer project associated with the current Little Patuxent Interceptor, Capital Project S-6274 in the capital budget, will need to be constructed before the development of homes on the Site.

#### **E. General Plan**

- # **The Property is designated Rural Conservation on the Policies Map 2000-2020 of the 2000 General Plan.**
- # **MD 144 is depicted as a Minor Arterial on the Transportation Map 2000-2020 of the 2000 General Plan.**

#### **F. Agency Comments**

- # **See attached comments on the proposal from the following agencies:**
1. State Highway Administration
  2. Department of Fire and Rescue Services
  3. (The Department of Public Works comments on GPA 2010-1 are also attached.)
- # **The following agency had no objections to the proposal:**
1. Department of Inspections, Licenses and Permits



### III. BACKGROUND INFORMATION

#### G. Adequate Public Facilities Ordinance

- # The petition is subject to the Adequate Public Facilities Ordinance. Any residential development on the Site would be subject to the requirements to pass the tests for adequate road facilities and adequate school facilities.

### IV. EVALUATIONS AND CONCLUSIONS

#### A. Relation to the General Plan

- # The Technical Staff report for the related GPA 2010-1 proposal to amend the Planned Service Area boundary so as to include the Site in the Planned Service Area addresses in detail how this overall proposal relates to the General Plan 2000, especially concerning the associated issues of historic and agricultural preservation. The General Plan evaluations of that report are incorporated into this Technical Staff Report by reference.
- # Although it is also addressed in the Technical Staff Report for GPA 2010-1, it must be emphasized that the petition is fully in harmony with Preservation of the Rural West Policy 3.1 to “Ensure that a critical mass of high quality, strategically located farmland is protected from development.”

The proposal for the R-ED District for the Site would function as a “compacted-cluster” subdivision that allows sufficient density to make it practical, while leaving the greatest amount of the overall Property to be preserved.

#### B. Evaluation of the Petition Concerning the Change Rule

- # The Petitioners do not include an allegation of Change to justify the Zoning Map Amendment request, and therefore did not include a boundary description of what constitutes the “neighborhood”.

Even so, the Department of Planning and Zoning provides its definition of the neighborhood boundaries for the Planning Board and/or the Zoning Board to consider this issue.

As a general description, these boundaries are US 40 to the north, approximately in between Bethany Lane and Marriottsville Road; to the west from Marriottsville Road to MD 144 and then Folly Quarter Road to the south to Carroll Mill Road; to the south from Folly Quarter Road at Carroll Mill Road to Centennial Lane approximately at the Old Annapolis Road intersection; and to the east along Centennial Lane from Old Annapolis Road to US 40. A map is attached to the end of this report to show this neighborhood area.

#### IV. EVALUATIONS AND CONCLUSIONS

- # **The Department of Planning and Zoning maintains that there has been no substantial change in the character of the neighborhood since the 2004 Comprehensive Zoning Plan was approved.**

The bulk of the neighborhood consists of the large Doughoregan Manor Property and the mostly developed, stable residential neighborhoods to the east between the Property and Centennial Lane. The land in the “peninsula” between US 40 and MD 144 is also mostly developed and stable. There have been no zoning changes or other significant alterations within this neighborhood.

#### **C. Evaluation of the Petition Concerning the Mistake Rule**

- # **As noted above in the Description of Proposal section, the allegation of Mistake is significantly based upon the GPA 2010-1 General Plan Amendment, which if approved, causes the Site to become incorporated into the Planned Service Area. The Petitioners maintain that because the Zoning Board zoned the Site RC-DEO with the assumption that it would remain in the No Planned Service area, if it is added to the Planned Service Area, that original assumption would be proven untrue with the passage of time.**
- # **The Department of Planning and Zoning has no fundamental objections to the basic logic and premise of this allegation. In the event the GPA 2010-1 General Plan Amendment is approved and the Site becomes part of the Planned Service Area, it is technically no longer part of the Rural West, so the assumption that it was part of the Rural West becomes incorrect accordingly.**
- # **Findings of Mistake in zoning cases can be based on failures to adequately address or anticipate future conditions. The General Plan 2000 and the 2004 CZP certainly can be viewed as inadequately addressing the future steps that would be needed to preserve Doughoregan Manor in a significant manner.**

It was known by the Department of Planning and Zoning staff at the time of the General Plan 2000 process that the Maryland Historical Trust Easement on the Property, a temporary easement, would expire in 2007. There was some consideration at that time to revise the Planned Service Area boundary relative to the Property because it was also known that some development of the Property would be necessary in order to make a preservation plan practical.

- # **It was known at that time that allowing a standard RC cluster subdivision of the Property would actually impair preservation efforts for the reasons stated in the Description of Proposal section above; spreading permitted large cluster lots with septic and wells over a very large area of the Property would encroach upon and undermine the historic and agricultural value of this landmark Property.**

#### IV. EVALUATIONS AND CONCLUSIONS

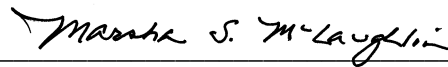
So it has also been acknowledged for some time that because of this issue some type of zoning change, a regulation amendment and/or map amendment, would likely be necessary ultimately to allow the preservation of a significant area of the Property.

- # **Even with this knowledge, and with the understanding of the extreme importance of the Property from a historic preservation standpoint as well agricultural preservation, no specific preservation strategy was included in General Plan 2000 to address the issue. Also, no steps were taken in 2004 CZP towards addressing any zoning issues related to achieving the important preservation of the Property.**

#### V. RECOMMENDATION

#### *APPROVAL*

For the reasons noted above, the Department of Planning and Zoning recommends that the request to rezone the Site from RC-DEO to R-ED, be **APPROVED**, subject to the prior approval of GPA 2010-1.



Marsha S. McLaughlin, Director

1/7/10

Date

MM/JRL/jrl

**NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.**

